IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1337 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MONTU ALIAS MAHEBOOBMIYA CHANDMIYA SAIYAD

Versus

COMMISSIONER OF POLICE

Appearance:

MR SM SHUKLA for Petitioner

MR UR BHATT ADDL.GOVERNMENT PLEADER

for Respondents.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 20/03/98

ORAL JUDGEMENT

The petitioner is arrested and kept under detention passing the order of detention on 21/5/1997 by the Police Commissioner for the City of Ahmedabad. The petitioner, by this application, under Art. 226 of the Constitution of India, therefore, calls in question the legality and validity of the order of detention passed invoking Sec.3(2) of the Gujarat Anti-Social Activities Act (for short the 'Act').

2. The Commissioner of Police had the information that the petitioner is a head-strong person i.e. tartar

and by his several nefarious activities, he was disturbing the public peace, and was terrorising the people. When he thereafter examined the record of the different Police Stations, he found that about two complaints were lodged against the petitioner with Maninagar Police Station and Dani Limda Police Station. As alleged in the F.I.R. lodged with the Maninagar Police Station, the petitioner, on 13/2/1997 at 00-30 hrs. near Chandola Talav was attempting to commit the offence by pointing a knife at a boy. At that time, the Police Van was passing. The Police Jamadar alighted from the Van and apprehended the petitioner. At that time, in order to escape and flee, the petitioner pointed his knife and tried to cause injury to the Police Jamadar and thereby the petitioner tried to obstruct him in the discharge of his duties. In another complaint lodged with Dani Limada Police Station, what was found is that the petitioner had been to Pan Bidi Galla where he wielding his knife, put the person sitting on the Pan Galla to fear of instant death or injury, and extorted Rs.300/-. The Police Commissioner, therefore, inquired in detail, and found that the petitioner was a dangerous person. He was moving from one to several other places with one or another weapon and wielding the weapon or pointing the weapon at the person, he was putting the persons to imminent danger of death or injury and was extorting money or was demanding different things, and unjust helps. Those who resisted his demands, had to face dire consequences. No one was,therefore, ready to come forward to lodge the complaint against the petitioner or to make a statement against him. Every one under fear of violence was keeping mum, and suffering miseries or woes. After considerable persuation, some of the persons agreed and gave the statement, and that too when the assurance was given that necessary particulars disclosing their identity would be kept secret. Their statements revealed that the petitioner was disturbing the public peace, by carrying out his hellish, & nefarious activities. His such subversive activities, disturbing the tempo of the public life were going berserk. To curb his subversive activities, immediate action was necessary; but the Police Commissioner also found that any action , if taken under general law sounding dull would be the futile exercise. The Police Commissioner could see that the only way out was to pass the impugned order under the Act. He then passed the order of detention, and getting the petitioner arrested, placed him under detention. The petitioner has, therefore, by this application, challenged the legality and validity of the order of detention.

3. The petitioner has challenged the order on several grounds, but at the time of submission, when query was made to the learned advocate representing the petitioner, he tapered off his submissions, confining to the only ground namely exercise of privilege under Sec.9(2) of the Act. According to him, without any just cause, the privilege was exercised, and particulars about witnesses were suppressed, as a result, he, for want of necessary particulars, could not make effective representation, and his right in that regard was jeopardised. The detention is, therefore, bad in law.

4. Mr. Bhatt, the learned APP has submitted that prompt action was taken by the Police Commissioner. After personally studying all the relevant materials placed before him, he passed the order of detention. The copies of all relevant materials are also supplied to the petitioner. The petitioner was the dangerous person, and was likely to retaliate. The Police Commissioner hence thought it fit not to disclose the particulars about the witnesses. When non-disclosure of the particulars of the witnesses was in the public interest, they were not supplied to the petitioner, and therefore, the discretion exercised by the Police Commissioner was quite just and proper. As copies of all relevant papers were supplied with all relevant details, the right of the petitioner was not jeopardised. The order was, therefore, required to be maintained. When both have confined to the only point namely exercise of privilege under Sec.9(2) of the Act, I will confine to that point alone, going to the root of the case, and would not dwell upon the other points.

5. It would be better if the law about the non-disclosure of certain facts is elucidated. Reading Article 22(5) of the Constitution of India, what becomes clear is that the grounds on which order of detention is passed are required to be communicated to the detenu. The detenu is, therefore, required to be informed not merely factual inference and factual material which led to inference namely not to disclose certain facts but also the sources from which the factual material is gathered. The disclosure of sources can enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act, the detaining authority is of course empowered to withhold such facts and

particulars, the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has to be exercised sparingly and in those cases, where public interest dictating non-disclosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons, the authority making the order has to make necessary inquiry applying his mind. What can be deduced from such constitutional as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. If the task of recording statements and necessary inquiry is entrusted to others, and if he mechanically endorses or accepts the recommendation of others or subordinate authority in that behalf without applying mind and taking his own decision, the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power, the detenu may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference to a decision in the case of Bai Amina, W/o. Ibrahim Abdul Rahim Alla Vs. State of Gujarat and others- 22 G.L.R. 1186 held to be the good law by the Full Bench of this Court in the case of Chandrakant N. Patel Vs. State of Gujrat & Others 35(1) [1994(1)] G.L.R. 761, may be made.

6. In view of such law, the authority passing the detention order has to satisfy the court that it was absolutely necessary in the public interest to suppress the particulars about witnesses keeping their safety in mind. No affidavit has been filed by the Police Commissioner who passed the order of detention. When no affidavit is filed, I am entitled to infer against the authority passing the order, and it can be assumed that without just and proper cause, privilege has been exercised, and without application of mind, the decision was taken by the authority. Reading the order, it appears that task of inquiry was entrusted to other Police Officer to find out whether fear expressed by the witnesses was genuine or imaginary or empty excuses. The Police Commissioner, without studying personally the report submitted by the Police Officer, has accepted the same. When he has mechanically accepted the report, his satisfaction is vitiated, and therefore, the privilege exercised, being unjust and improper, the order of detention must be held to be unconstitutional and illegal.

7. For the aforesaid reasons, this application is allowed. The order of detention dt. 21/5/1997 passed by the Police Commissioner, Ahmedabad, being unconstitutional and illegal, is hereby quashed and set aside. The petitioner is ordered to be set at liberty, forth with, if no longer required in any other case. Rule accordingly made absolute.

20/3/1998 ----
(ccs)